

Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure

Page 2 of 6

Serial No.: 10/674,174

Confirmation No.: 1946

Filed: 29 September 2003

For: CLOSURE SYSTEM AND METHOD OF MANUFACTURE

Claims 1-3, 7-15, 29, and 30

With respect to independent claims 1 and 15 (and dependent claims 2, 3, 7-14, 29, and 30), Applicants respectfully submit that stated rejection does not establish that EP '121 discloses the combination of both adhesive attachment and welding, recited in independent claims 1 and 15.

In support of this rejection, it was asserted that "[t]he bonding tape [of EP '121] is further adhesively attached and welded to the first major surface of the carrier tab within the overlap region (C. 18, L. 5-10)." Applicants disagree. The cited portion of EP '121 is reproduced below:

With reference to Fig. 2, a stress beam section 98 can be operatively connected to each side panel 90 along the free end region 92 of the side panel with suitable attaching means, such as adhesive bonding, thermal bonding, ultrasonic bonding, clips, staples, sewing or the like. The stress beam sec-...."

EP '121, C. 18, L. 5-10.

This section of EP '121 does not, as asserted, disclose the combination of both adhesive attachment and welding as recited in independent claims 1 and 15. Rather, the cited section of EP '121 discloses these different means for attachment in the alternative.

It was further asserted that "EP '121 discloses that adhesive bonding attaches the bonding tape and the major surface of the carrier tab. These attachment means can be considered as adhesively attaching and welding two members since it is well known in the art to have adhesives that when activated create high temperatures that also cause welding between the two members and therefore the claim limitations are met." (Final Office Action, page 5, item 7). Applicants submit that this assertion does not meet the requirements for establishing that something is "well known in the art" and, thus, cannot support the rejection of claims 1-3, 7-15, 29, & 30.

"It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and

Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure

Page 3 of 6

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unquestionable demonstration as being well-known.” (M.P.E.P. §2144.03(A), emphasis in original). Furthermore, “[i]t is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based.” (M.P.E.P. §2144.03(A)). Official notice may be relied upon to “provide sufficient support for conclusions as to peripheral issues.” However, “[w]ith respect to core factual findings in a determination of patentability . . . [the Board] cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, [the Board] must point to some concrete evidence in the record in support of these findings.” *In re Zurko*, 258 F.3d 1379, 1385-86, 59 USPQ2d (BNA) 1693, 1697 (Fed. Cir. 2001).

In the present case, the assertion that “to have adhesives that when activated create high temperatures that also cause welding between the two members” is not disclosed by the reference nor is it capable of instant and unquestionable demonstration as being well-known. Furthermore, this assertion is relied upon with respect to core factual findings in the determination of patentability. No concrete evidence has, however, been provided in the record in support of these findings. Thus, Applicants submit that this assertion cannot be relied upon to support the rejection of claims 1-3, 7-15, 29, & 30.

In addition, if inherency was the intended basis for this rejection, i.e., that EP ‘121 inherently anticipates the rejected claims, Applicants submit that the requirements for an anticipation rejection based on inherency have also not been met.

“The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic.” (MPEP § 2112(IV), p. 2100-57, 8th Ed., Rev. 3, (Aug. 2005) (emphasis in original)). “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure

Page 4 of 6

Serial No.: 10/674,174

Confirmation No.: 1946

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The Office Action provides no credible reasoning as to how the asserted result "necessarily flows" from the cited teachings of EP '121. Rather, only unsupported assertions as to unstated activation temperatures for adhesives are relied on as the basis for the rejection.

For at least the above reasons, Applicants respectfully submit that the rejection of claims 1-3, 7-15, 29, & 30 under 35 U.S.C. § 102 in view of EP '121 does not meet the requirements for an anticipation rejection.

Claims 31-43

Independent claims 31 and 43 both recite a closure system that includes a overlap region wherein the first major surface of the carrier tab and the second major surface of the base tab are not attached to each other within the overlap region.

It was asserted in the Office Action that EP '121 discloses a closure system wherein the first major surface of the carrier tab (44) and the second major surface of the base tab (90) are not attached to each other within the overlap region. It is asserted that support for this rejection can be found in Figures 1-3 of EP '121. Applicants respectfully disagree.

A review of Figures 1-3 of EP '121 and the associated description of those figures in the specification does not reveal any teaching that the carrier tab 44 and the base tab 90 are not attached to each other within the overlap region. Rather, EP '121 is silent with respect to this feature.

For example, the top plan view of the article and fastening system (Figure 1) and the top plan view of the fastening system alone provide no assistance in assessing whether side panels (90) and fastening tab (44) are "attached" to each other. Figure 3, a cross-sectional view of the fastening system of Figure 2, shows an overlapping region between side panel (90) and fastening tab 44 (panel juncture region (80)). Figure 3 alone, however, provides no assistance in determining whether the side panel (90) and fastening tab (44) are "attached" to each other at the panel juncture region (80). However, at column 18, lines 35-44 of EP '121, it is disclosed that "[a] fastening means, such as provided by fastening tape tab 44, is operably connected to each of

Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure

Page 5 of 6

Serial No.: 10/674,174

Confirmation No.: 1946

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the side panels 90. In the illustrate configuration [Figure 2], the juncture section along which fastening tab 44 intersects the terminal side edge of panel 90 provides a relatively narrowed panel juncture region 80. The connection may be accomplished with suitable attaching means, such as adhesive bonding, thermal bonding, ultrasonic bonding, clips, staples, sewing, or the like."

Thus, Applicants submit that there is no teaching in the disclosure of the fastening system of EP '121 that the side panels (90) and the fastening tab (44) are not "attached" at the panel juncture region (80)."

As such, the stated rejection fails to establish that EP '121 teaches each and every element of rejected claims 31 and 43, as well as claims 32-42 dependent from claim 31.

For at least the above reasons, Applicants submit that the stated rejection of claims 1-3, 7-15, and 29-43 in view of EP 0 669 121 A1 does not meet the requirements for a 35 U.S.C. § 102 rejection. Reconsideration and withdrawal of the stated rejection of claims 1-3, 7-15, and 29-43 are, therefore, respectfully requested.

Response Under 37 C.F.R. §1.116 - Expedited Examining Procedure

Page 6 of 6

Serial No.: 10/674,174

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The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 27th day of March, 2006 at 2:57 p.m. (Central Time).

By: Name: Rachel Angliardi-Gabauer
